

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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MASHA ALLEN,	:	CIVIL ACTION NO. 08-4614
Plaintiff	:	
	:	
v.	:	Camden, New Jersey
	:	September 30, 2009
FAMILIES THRU INTERNATIONAL	:	9:39 o'clock a.m.
ADOPTION, et al,	:	
Defendant	:	
.	:	

TELEPHONE CONFERENCE
BEFORE THE HONORABLE ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

- - -

APPEARANCES:

For the Plaintiff:	ROBERT N. HUNN, ESQUIRE Kolsby, Gordon, Robin & Shore, Esquires One Liberty Place 2000 Market Street 28th Floor Philadelphia, PA 19103
	FRANK MANERI, ESQUIRE THOMAS VECCHIO, ESQUIRE Dilworth Paxson, LLP LibertyView 457 Haddonfield Road Suite 700 Cherry Hill, NJ 08002
	DARREN SUMMERVILLE, ESQUIRE The Bird Law Group 2170 Defoor Hills Road Atlanta, GA 30318
For the Defendant FTIA:	DONALD C. COFSKY, ESQUIRE Cofsky & Zeidman, LLC 209 N. Haddon Avenue Haddonfield, NJ 08033-2322

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APPEARANCES:

For the Defendant JEANNENE SMITH, Pro Se
Smith: 312 S. Lincoln Avenue
Cherry Hill, NJ 08002

For the Defendant BRAD WEINTRAUB, ESQUIRE
Adagio Health: Weiner Lesniak
629 Parsippany Road
P.O. Box 438
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1 (The following occurred in open court at 9:39
2 o'clock a.m.)

3 THE COURT: Good morning, this is Judge Donio. We
4 are on the record, a telephone record on Case Number 08-4614.
5 May I have the appearances for the record, please?

6 MR. HUNN: Good morning, your Honor, Robert Hunn.

7 MR. SUMMERVILLE: Good morning, your Honor, this is
8 Darren Summerville, on behalf of the plaintiff, pending a pro
9 hac application.

10 MR. MANERI: Good morning, your Honor, Frank Maneri,
11 of Dilworth Paxson, on behalf of the plaintiffs.

12 MR. VECCHIO: Good morning, your Honor. Tom Vecchio
13 of Dilworth Paxson on behalf of the plaintiff.

14 THE COURT: I'm sorry, Mr. Vecchio?

15 MR. VECCHIO: Yes.

16 MR. COFSKY: Donald Cofsky, representing Families
17 Thru International Adoption.

18 MR. WEINTRAUB: Good morning, your Honor, Brad
19 Weintraub from Weiner Lesniak, for the third party defendant,
20 Adagio Health.

21 THE COURT: And as I understand from the parties,
22 there is no appearance, at this time, for the pro se
23 defendant, Ms. Smith.

24 MR. HUNN: Your Honor, we have been trying to call
25 her. We had a couple of numbers, actually. My secretary may

1 have just gotten through to her right now. So, she may be
2 calling in.

3 THE COURT: Again, let me put you on hold for a
4 second. Is this an AT&T or other service number that someone
5 calls in to be connected?

6 MR. HUNN: Yes, your Honor.

7 THE COURT: All right, let me put you on hold for a
8 few moments and then we'll check back, okay.

9 (Pause.)

10 THE COURT: All right, we're back on the electronic
11 record. This conference is being electronically recorded and
12 I would ask that each time you speak, you state your name for
13 the record.

14 This is a telephone conference in Case Number
15 08-4614. We began by noting the appearances and apparently,
16 Ms. Smith was on the phone and is now on the phone. So,
17 let's place the appearances again, for the record, beginning
18 with plaintiff's counsel.

19 MR. HUNN: Yes, your Honor, it's Robert Hunn for the
20 plaintiff.

21 MR. SUMMERVILLE: Also for the plaintiffs, Darren
22 Summerville.

23 MR. MANERI: Also for the plaintiffs, Frank Maneri
24 of Dilworth Paxson.

25 MR. VECCHIO: Also for the plaintiffs, Tom Vecchio

1 of Dilworth Paxson.

2 MR. COFSKY: Donald Cofsky for Families Thru
3 International Adoption.

4 MR. WEINTRAUB: Brad Weintraub, your Honor, for the
5 third party defendants, Adagio Health.

6 MS SMITH: Jeannene Smith, pro se.

7 THE COURT: Okay. That's everyone, at this point.
8 Let me address the first issue I want to address with counsel
9 and Ms. Smith and that's the notice of the motion for the pro
10 hac admission of Mr. Bird and Mr. Summerville. I understand
11 that there's been consent of all parties, other than Ms.
12 Smith. Ms. Smith, I'm not sure if you've consented or
13 whether you oppose the motion.

14 MS SMITH: It's accepted, I should say.

15 THE COURT: It's accepted. All right, the
16 applications of the pro hac attorneys are in order. I just
17 need a certification from one of the local counsel. Is that
18 going to be Mr. Maneri or Mr. Vecchio?

19 MR. MANERI: Yes, your Honor.

20 THE COURT: All right, can you provide a
21 certification to the Court that they will be serving as the
22 local counsel in this case and then we will be able to enter
23 the order granting the motion.

24 MR. MANERI: Certainly.

25 THE COURT: Mr. Hunn, are you remaining in the case?

1 MR. HUNN: I am not, your Honor. My motion to
2 withdraw, as you recall, was withdrawn pending the filing of
3 this motion. Now, with it being filed and granted, would the
4 Court like me to file anything in addition to note my removal
5 from the case?

6 THE COURT: Well, I haven't granted the motion for
7 pro hac, because the order has to be entered. But assuming
8 that the certification from Dilworth counsel is appropriate
9 and the other certifications are appropriate and consistent
10 with the local rules, you will need to indicate a withdrawal
11 of your appearance on the record, in some fashion and you can
12 check the local rules on how to do that, okay?

13 MR. HUNN: That's fine, your Honor.

14 THE COURT: All right, now, the issue of the
15 plaintiff's counsel representation has been sorted out and
16 resolved, let's move forward then with where we are in the
17 case concerning discovery of this matter. Who would like to
18 address that on behalf of plaintiffs?

19 MR. SUMMERVILLE: Your Honor, this is Darren
20 Summerville of the Bird Law Group. As you know, we have
21 consulted with the Dilworth firm and have a litigation plan
22 sort of set out. And as soon as the pro hac order is finally
23 entered, we, of course, will reach out to the remainder of
24 counsel, under the local rules, to go ahead with these
25 initial consultations on the disclosures.

1 THE COURT: Have Rule 26 disclosures been done in
2 the case, at all?

3 MR. SUMMERVILLE: They have not.

4 THE COURT: How about from the defense, Mr. Cofsky?

5 MR. COFSKY: I have a packet here. I have not known
6 who to send it to.

7 THE COURT: All right, so, you're ready to send
8 yours out, because the --

9 MR. COFSKY: Yes.

10 THE COURT: -- previous scheduling order I had some
11 time ago, was for Rule 26 disclosures to be done on or before
12 6/15 and then the issue came to, I guess, with this counsel
13 issue.

14 MR. WEINTRAUB: Your Honor, Brad Weintraub from
15 Weiner Lesniak, for Adagio, we served initial disclosures on
16 all counsel back in June, I believe.

17 THE COURT: So, you've done yours.

18 MR. WEINTRAUB: Yes, I sent it to Mr. Hunn and
19 everyone else.

20 MR. HUNN: This is Robert Hunn, I sent those
21 disclosures to everyone on behalf of the plaintiff.

22 THE COURT: All right, how about Ms. Smith, have you
23 done your Rule 26 disclosures?

24 MS SMITH: I am not sure.

25 THE COURT: All right, here's what I'm going to do.

1 Everybody go back and review their files. To the extent you
2 haven't done your Rule 26 disclosures, let's get them done by
3 October 2nd. All right.

4 Now, has any written discovery been served by any
5 parties?

6 MR. COFSKY: Cofsky, I'm not aware of any.

7 MR. HUNN: No, your Honor, this is Robert Hunn.

8 THE COURT: All right and I take it then, no
9 depositions have been conducted to date?

10 MR. HUNN: That's correct, your Honor, Robert Hunn.

11 THE COURT: Okay. What we will do then, is set out
12 a schedule. Let's have you begin your written discovery
13 requests and responses and begin discussing when and how many
14 depositions you're going to be taking. It seemed to me that,
15 in light of the fact that tomorrow is October 1st, we should
16 be able to get the fact discovery done by the end of
17 February. Is that date acceptable to all parties?

18 MR. SUMMERVILLE: I believe that's attainable, your
19 Honor. This is Darren Summerville.

20 MS SMITH: Your Honor, I'm at a disadvantage.
21 Unfortunately, I am not with Reaching Out. I have left prior
22 to this case beginning and they have all the corporate
23 documents and files that came from our case. So, you know, I
24 may need to tell them -- to testify, your Honor. Reaching
25 Out and Child Promise has chosen not to answer or respond in

1 this case and therefore, I am placed in this disadvantage and
2 I (inaudible).

3 THE COURT: Well, if there's any application you
4 believe is warranted under the Federal Rules of Civil
5 Procedure, you can make that application and you can review
6 the Federal Rules of Civil Procedure with respect to the
7 service of discovery, including third party discovery. I am
8 going to set a date of February 26, 2010 for the completion
9 of fact discovery. If anybody has an issue with reaching
10 that date, they'll need to make an application to the Court
11 prior to the expiration of that date, setting forth what
12 efforts have been done to date, to complete discovery and why
13 any additional time may be necessary.

14 Let me direct this, first, to the plaintiff's
15 counsel. Are there any amendments to the pleadings
16 contemplated or any request to add additional parties?

17 MR. SUMMERVILLE: This is Darren Summerville, in
18 terms of adding new parties, we do not -- we are not aware of
19 parties we wish to add, at this time. There is some question
20 as to the third party defendant, Adagio Health, which
21 hopefully, has not brought directed claims against that
22 defendant yet and are still considering the discovery.

23 THE COURT: All right, now, this is directed to each
24 defendant and/or third party defendant, do any of the
25 defendants or third party defendant anticipate adding new

1 parties or amending the pleadings?

2 MR. COFSKY: Don Cofsky, I have none, at this time.

3 MS SMITH: Ms. Smith?

4 MR. WEINTRAUB: Your Honor, we have not contemplated
5 that.

6 THE COURT: Could you just state your name when you
7 speak, please?

8 MR. WEINTRAUB: Yeah, Brad Weintraub.

9 THE COURT: Okay and now, Ms. Smith?

10 MS SMITH: I have not, not that I'm aware of.

11 THE COURT: All right, any motions to amend or to
12 add new parties, may be filed sooner, but no later than
13 December 31st.

14 Now, is the plaintiff anticipating utilizing expert
15 reports?

16 MR. SUMMERVILLE: We will, Darren Summerville, we
17 will, your Honor.

18 THE COURT: And what type of experts?

19 MR. SUMMERVILLE: As we see the case, right now, it
20 is a matter of what standards were involved with the
21 international adoption back at the time of Masha Allen's
22 adoption, in terms of what pre and post-placement studies and
23 observations should have been done.

24 THE COURT: All right, so, on liability?

25 MR. SUMMERVILLE: That's correct.

1 THE COURT: Any damage experts?

2 MR. SUMMERVILLE: We do not now if it will be an
3 actual expert in the sense of a hired expert versus one of
4 Masha Allen or several of Masha Allen's treating
5 psychiatrists' position.

6 THE COURT: And I will put a date, at this time, for
7 the service of any expert reports, affirmative expert
8 reports, no later than February, I'm sorry, March 31, 2010.
9 Any rebuttal, April 30, 2010 and expert depositions to be completed
10 by May 31, 2010. Are those dates acceptable to the parties?

11 MR. COFSKY: Initially, yes, your Honor. This is
12 Cofsky. Depending on the expert reports, if I receive them
13 by the 31st of March, whether that 30 days would be an
14 adequate time for my expert or experts to review and respond.
15 But for now, that will be fine. If there's an issue, we'll
16 contact the Court.

17 THE COURT: All right, does anyone object to that
18 schedule?

19 MR. WEINTRAUB: Your Honor, Brad Weintraub, I agree
20 with Mr. Cofsky. I don't necessarily object to it. I may
21 need more time, as well, 30 days might not be enough in a
22 case like this, but we could address that down the road.

23 MR. SUMMERVILLE: On behalf of the plaintiff, Darren
24 Summerville, those dates are acceptable to us, your Honor.

25 THE COURT: Ms. Smith?

1 MS SMITH: They're acceptable, as far as I know,
2 yes.

3 THE COURT: All right. Any further dispositive
4 motions, they can be filed sooner, but no later than June 30,
5 2010 and we will pre-try this case in the month of July and
6 early August. The dates for the pre-trial submissions will
7 be set forth in my written order.

8 Now, this is again directed to plaintiff's counsel,
9 have you provided medical authorizations for the treating
10 doctors' medical records?

11 MR. SUMMERVILLE: I do not believe that's been done,
12 your Honor.

13 THE COURT: Are we having any issue in that regard
14 or did the parties anticipate working that issue out?

15 MR. SUMMERVILLE: I suspect we can reach some
16 agreement, certainly.

17 THE COURT: All right, are there any other issues on
18 discovery, at this time?

19 MR. SUMMERVILLE: Darren Summerville, for the
20 plaintiff, none that I'm aware of.

21 MR. COFSKY: Cofsky, here. None, your Honor, but
22 one question which might expedite matters pursuant to Ms.
23 Smith's concern about inability to get files. I know in New
24 Jersey, when an agency goes out of business, the files are
25 required to be taken over and stored by another agency. She

1 may who that agency is. That would help us in getting those
2 files.

3 MS SMITH: Unfortunately, they were never able to
4 locate an agency and they have -- they sent them to public
5 storage somewhere.

6 THE COURT: All right, Mr. Cofsky.

7 MS SMITH: We tried sending them to the State of New
8 Jersey and the State of New Jersey rejected them and sent
9 them back.

10 THE COURT: Anything further, Mr. Cofsky?

11 MR. COFSKY: No, that's it, your Honor.

12 THE COURT: All right, now, before we finish this
13 scheduling conference, I want to address with the parties,
14 whether there's any issue or has there been any discussion
15 about electronic discovery, e-mails and the discovery of
16 digital information? What's the plaintiff's position?

17 MR. SUMMERVILLE: Your Honor, I am unaware of
18 whether or not those discussions took place as part of the
19 initial collaboration on the case. But we would be prepared
20 to do that in the very near term, if they have not been done.

21 THE COURT: How about defense counsel?

22 MR. COFSKY: There's been no, that's not been
23 addressed, at all, your Honor.

24 THE COURT: All right. Now, what I'm going to
25 request that the parties meet and confer pursuant to our

1 local rules and that the plaintiffs send me a letter by
2 October 16th that that meet and confer has been done and
3 address whether and if so, what are any electronic discovery
4 issues. Okay?

5 MR. SUMMERVILLE: Of course.

6 THE COURT: Now, the stay of discovery is lifted and
7 the new scheduling order will be set forth and will be placed
8 on the docket. And the remaining item for the Court will be
9 to schedule a status telephone conference, to see where the
10 parties are in this discovery phase, on how they are
11 proceeding. And we will have that status conference on a
12 date and time that will be set in my order for a date in
13 early January. If there's any need to have a conference
14 earlier than that, the parties may submit a letter request
15 for a telephone conference. And to the extent there are any
16 discovery disputes, the Court will remind counsel and the pro
17 se defendant, to take a close look at Local Rule 37. And the
18 obligations to meet and confer and attempt to resolve any
19 discovery disputes prior to application to the Court. And
20 then the requirement that they have a conference call with
21 the Magistrate Judge before a motion on discovery issues.

22 All right, is there anything further we need to
23 address today, from the plaintiff's counsel?

24 MR. SUMMERVILLE: No, your Honor, I don't think
25 there is. This is Darren Summerville.

1 THE COURT: All right and from each defendant, if
2 they could state their name and indicate whether there is
3 anything further?

4 MR. COFSKY: Cofsky, here, no, your Honor.

5 MR. WEINTRAUB: Brad Weintraub, your Honor, nothing.

6 MS SMITH: Jeannene Smith, nothing.

7 THE COURT: All right. Counsel and Ms. Smith, this
8 order, scheduling order will be placed on the docket. I will
9 request that plaintiff set up the next call and having
10 nothing further to address, you all have a nice day, we are
11 adjourned.

12 (Proceeding adjourned 9:57 o'clock a.m.)

13 * * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

s:/Geraldine C. Laws, CET
Laws Transcription Service

Dated 9/16/10